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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Revised draft model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation]

Note by the Secretary-General*

In its resolution 59/300 of 22 June 2005, by approving the recommendations of the Special Committee on Peacekeeping Operations, including paragraph 39 of part two, chapter II of its report (A/59/19/Rev.1), the General Assembly requested the Secretary-General to submit, for consideration at its sixtieth session, a revised draft model memorandum of understanding between the United Nations and troop-contributing countries, taking into account the recommendations of the Special Committee in its 2005 report (ibid.), the recommendations of the Adviser to the Secretary-General on Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel, His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of Jordan to the United Nations, in his report on a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations (see A/59/710) and General Assembly resolution 59/287 of 13 April 2005. Subsequently, in its resolution 60/263 of 6 June 2006, by endorsing the recommendations of the Special Committee on Peacekeeping Operations, including paragraph 74 of its report (A/60/19), the General Assembly requested the Secretary-General to make available to Member States, inter alia, a proposal on national investigations officers, including the administrative aspects, and a revised draft model memorandum of understanding, no later than the end of April 2006.

In its resolution 60/289 of 8 September 2006, by endorsing the recommendations of the Special Committee on Peacekeeping Operations on its 2006 resumed session, including paragraphs 5 and 8 of its report (A/60/19/Add.1), the General Assembly requested the Secretary-General to provide the revised draft

* Late submission is due to the longer consultation period required on the draft text than originally anticipated.

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model memorandum of understanding to Member States as a Special Assembly document in all official United Nations languages by September 2006, and requested that the document take into consideration views expressed by Member States in 2005 and 2006.

The revised draft model memorandum of understanding between the United Nations and troop-contributing countries that follows is submitted pursuant to the aforementioned mandates, for consideration by the open-ended Ad Hoc Working Group of Experts, scheduled to convene from 11 to 15 December 2006 (A/61/494, para. 6).

Revised draft model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation]*

Article 2
Documents constituting the memorandum of understanding

After the reference to annex G, *insert* a reference to annex H *as follows*:

H. United Nations standards of conduct

1. Ten Rules — Code of Personal Conduct for Blue Helmets

2. We Are United Nations Peacekeepers

3. Prohibitions on sexual exploitation and abuse

Commentary

Annex H is new. It reflects one of the key reforms advocated by the Adviser to the Secretary-General on Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel (hereinafter "the Adviser"), that the memorandum of understanding (MOU) should contain the United Nations standards of conduct applicable to members of national contingents (see A/59/710, paras. 25 and 27). This reform was also recommended by the Special Committee on Peacekeeping Operations (see A/59/19/Rev.1, part two, chap. II, para. 8) and endorsed by the General Assembly in its resolution 59/300.

* The revised draft model memorandum of understanding between the United Nations and troop-contributing countries is based on the text of the model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation], contained in chapter 9 of the Contingent-owned Equipment Manual (COE Manual) of 22 December 2005 (A/C.5/60/26) being the version currently used by the United Nations Department of Peacekeeping Operations. That document is in turn based on the 1997 draft model memorandum of understanding between the United Nations and Member States contributing resources to United Nations peacekeeping operations (see A/51/967, annex, and Corr.1 and 2).

Given that the requests of the General Assembly are limited to revisions to the draft model memorandum of understanding between the United Nations and troop-contributing countries only, all references in chapter 9 of the COE Manual relating to the contribution of police personnel should be disregarded for present purposes.

As the mandated revisions to the draft model memorandum of understanding between the United Nations and troop-contributing countries do not require any changes to the language of the preamble, articles 1, 4-7, 8-15, the testimonium and signature blocks, as well as annexes A-E and annex G in chapter 9 of the COE Manual, those provisions have not been reproduced here.

Proposed additions to the text of the model memorandum of understanding, as contained in document A/C.5/60/26, are in bold face.

In the case of the proposed new articles — article 7 bis to article 7 septiens — it is suggested that they be inserted between the current articles 7 and 8. These new articles would be renumbered in the event they are approved by the General Assembly, as of course, would the subsequent articles.

A commentary has been included to explain the proposed revisions and additions to the current model memorandum of understanding contained in document A/C.5/60/26.

Article 3
Purpose

3. The purpose of the present MOU is to establish the administrative, logistics and financial terms and conditions to govern the contribution of personnel, equipment and services provided by the Government in support of [United Nations peacekeeping mission] **and to provide for the maintenance of discipline and good order among such personnel and the investigation of, and accountability for, violations.**

Commentary

The new text reflects the general purpose of the changes to the MOU proposed by the Adviser.

Article 7 bis
United Nations standards of conduct

1. All members of the Government's national contingent shall be bound by the United Nations standards of conduct set out in annex H, namely:

(a) Ten Rules — Code of Personal Conduct for Blue Helmets;

(b) We Are United Nations Peacekeepers; and

(c) Prohibitions on sexual exploitation and abuse.

2. The Government shall issue or promulgate the United Nations standards of conduct in a form or manner that makes them binding under their laws or relevant disciplinary code upon all members of its national contingent.

3. The Government shall ensure that all members of its national contingent are made familiar with and fully understand the United Nations standards of conduct. To this end, the Government shall, inter alia, ensure that all members of its national contingent receive adequate and effective predeployment training in those standards.

Commentary

1. Paragraph 1 implements the recommendation of the Special Committee on Peacekeeping Operations that the prohibitions against sexual exploitation and abuse in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) (hereinafter the "2003 bulletin") should be applicable to all peacekeeping personnel, including all members of national contingents (A/59/19/Rev.1, part two, chap. II, para. 8). It also implements the Adviser's recommendation to include in the MOU the standards of conduct set out in the 2003 bulletin (see A/59/710, para. 25) and the standards of conduct contained in the documents "Ten Rules — Code of Personal Conduct for Blue Helmets" and "We Are United Nations Peacekeepers" (ibid., para. 27).

2. At its 2005 session, the Special Committee requested the Secretary-General to appoint a group of legal experts, inter alia, "to study and propose ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to the issue of sexual exploitation and abuse" (A/59/19/Rev.1, para. 40 (e)). The General Assembly endorsed that proposal in its

resolution 59/300 of 22 June 2005. On 11 September 2006, the Secretary-General appointed a group of experts to carry out this task. In November 2006, that group is due to submit its report to the Secretary-General, who will transmit it to the General Assembly for consideration at its sixty-first session. The list of the United Nations standards of conduct contained in subparagraphs (a) to (c) of the proposed article 7 bis may require revision in the light of any decision which the General Assembly may take with respect to the proposals of this group.

3. Paragraph 2 implements the Adviser's recommendation that the MOU require troop contributors to issue the standards of conduct referred to in paragraph 1 in a form that makes them binding on all members of national contingents (see A/59/710, paras. 25 and 27). It should be noted that, to implement this recommendation, it is not necessary that troop-contributing countries adopt legislation to make those standards part of their national laws. Rather, what is required is that countries issue the United Nations standards of conduct to all members of their national contingents and that they do so in such a way that all members of those contingents will be required, under their laws or relevant disciplinary codes, to comply with them. This might be done, for example, by issuing them as a standing or routine order to the formation, unit or body that composes the Government's contingent. All members of the contingent will then be legally required to comply with them by virtue of their duty, under military law or otherwise, to comply with standing orders or other routine orders of a continuing nature.

4. Paragraph 3 implements the Adviser's recommendation that the MOU should obligate troop contributors to ensure that all members of national contingents attend and receive training on the detailed prohibitions against sexual exploitation and abuse contained in the 2003 bulletin and that they be made aware of the required United Nations standards of conduct prior to deployment (ibid., para. 39).

Article 7 ter
Discipline

1. The Government acknowledges that responsibility for disciplinary action in respect of all members of its national contingent while they are assigned to the military component of [United Nations peacekeeping mission] rests with the commander of that contingent. The Government accordingly undertakes to ensure that the commander of its national contingent is vested with the necessary authority for the purpose of maintaining discipline and good order among all members of the national contingent and, in particular, ensuring that they comply with the United Nations standards of conduct, Mission standards of conduct and local laws and regulations. The Government further undertakes that the commander of its national contingent shall for that purpose take all appropriate steps to exercise that authority.

2. The Government undertakes to ensure that the commander of its national contingent communicates to the Force Commander of [United Nations peacekeeping mission] reports of any disciplinary action that he or she, or persons under his or her command, may take in respect of members of the Government's national contingent.

3. The Government undertakes to ensure that the commander of its national contingent consults with the Force Commander, at the Force Commander's

request, on matters concerning the maintenance of discipline and good order among members of the national contingent and compliance with the United Nations standards of conduct, Mission standards of conduct and local laws and regulations.

4. The Government shall ensure that the commander of its national contingent receives adequate and effective predeployment training in the proper discharge of his or her responsibility for maintaining discipline and good order among all members of the contingent and ensuring their compliance with the United Nations standards of conduct, Mission standards of conduct and local laws and regulations.

5. It is understood that the Force Commander will assess the performance of the commander of the Government's national contingent on the basis, inter alia, of the manner in which he or she discharges his or her responsibility for ensuring compliance with the United Nations standards of conduct, Mission standards of conduct and local laws and regulations.

Commentary

1. Both the report of the Adviser and the report of the Special Committee on Peacekeeping Operations contain recommendations regarding the responsibility of the contingent commander with respect to matters of discipline among the personnel under his or her command. These recommendations naturally assume, for their implementation, that the commanders of national contingents are responsible for the maintenance of good order and discipline within those contingents and that they have the necessary powers to discharge that responsibility. Paragraph 1 accordingly affirms that, in accordance with the established principles and practices of United Nations peacekeeping, responsibility for disciplinary action with respect to the Government's national contingent lies with the commander of that contingent. It then sets out, as corollaries of that fundamental principle, two assurances on the part of the troop-contributing country — first, that the commander of its national contingent is vested with the necessary authority to maintain good order and discipline among the members of its contingent; and, secondly, that he or she will take appropriate steps to exercise that authority and ensure that discipline and good order are in fact maintained and that the United Nations standards of conduct, Mission standards of conduct and local laws and regulations are respected. In this last respect, the inclusion of the second of these assurances also implements the recommendation of the Adviser that the Secretary-General always obtain formal assurances from troop-contributing countries that they will ensure respect for local law by members of their contingents (see A/59/710, para. 78), as required by paragraph 6 of the Organization's model status-of-forces agreement (hereinafter "model SOFA" (see A/45/594, annex)).

2. Paragraphs 2 and 3 of the present article go on to set out certain specific undertakings in this connection on the part of the troop-contributing country. In the model SOFA, the United Nations undertakes that the head of its peacekeeping operation will take all appropriate measures to ensure that members of the peacekeeping operation respect local laws and regulations (ibid., para. 6), do not abuse the operation's commissaries (ibid., para. 15 (b)) and observe customs and fiscal laws and regulations (ibid., para. 31). The Organization further undertakes that the head of mission will take all appropriate measures to ensure the

maintenance of discipline and good order among the members of the operation (ibid., para. 40).

3. In order to be in a position to discharge these undertakings and to be able to account to the host country for their proper implementation, the Head of Mission, through the Force Commander, as head of the military component with general responsibility for the good order of that component, needs to be kept aware of the situation within each national contingent with respect to the maintenance of discipline, including problems that may arise and remedial action taken. Paragraph 2 is aimed at ensuring that this happens.

4. Again, in order to be able to discharge the undertakings mentioned, the Head of Mission, acting through the Force Commander, also needs to be able to consult with the commanders of national contingents, as and when necessary, regarding the maintenance of discipline and good order among the members of the military component. Paragraph 3 facilitates such communication and interaction.

5. Paragraph 4 implements the Adviser's recommendation that the MOU should require troop contributors to ensure that contingent commanders, who are responsible for discipline among the national contingent, are aware of their responsibility to ensure that contingents attend and receive training on the detailed prohibitions against sexual exploitation and abuse contained in the 2003 bulletin prior to deployment (see A/59/710, para. 39). It is also aimed at ensuring that they are aware of their responsibility to make sure that contingent members receive training on other relevant standards of conduct applicable to them while serving in the United Nations peacekeeping operation concerned.

6. Paragraph 5 implements the recommendation of the Special Committee on Peacekeeping Operations that the performance appraisals of military commanders should include an assessment of how they have discharged "the responsibility for creating and maintaining an environment that prevents sexual exploitation and abuse" (A/59/19/Rev.1, part two, chap. II, para. 15). This is in line with the intent of the Special Committee that commanders of national contingents be held accountable for failure to meet command objectives relating to creating and maintaining an environment that prevents sexual exploitation and abuse (ibid.). The proposed language has been broadened to include compliance with all relevant standards of conduct.

Article 7 quater
United Nations investigations

1. In the event that the United Nations has reasonable grounds to suspect that any members of the Government's national contingent have committed an act of misconduct, the United Nations shall without delay inform the Government and may, as appropriate, initiate an administrative investigation into the matter (hereinafter a "United Nations investigation"). It is understood in this connection that any such investigation will be conducted by the appropriate United Nations investigative office, including the United Nations Office of Internal Oversight Services, in accordance with the rules of the Organization.

2. The Government agrees to instruct the commander of its national contingent to cooperate fully and to share documentation and information,

particularly from a contingent investigation, with any United Nations investigation into possible misconduct, by any members of its national contingent. The Government also undertakes, through the commander of its national contingent, to instruct the members of its national contingent to cooperate actively and fully with any such United Nations investigation, including by making themselves available for interview.

3. The Government understands that the United Nations will repatriate a contingent commander who is found by a United Nations investigation to have failed to cooperate with it during an investigation into possible serious misconduct by any members of its national contingent or who is found to have failed to have exercised effective command and control by not taking effective action to prevent serious misconduct or by not immediately reporting or taking action in respect of allegations of such misconduct when they were reported to him or her or when he or she otherwise became aware of them. The United Nations shall explain to the Government the findings that led to the repatriation.

4. The Government shall make any such failure on the part of its contingent commander an offence or disciplinary infraction under its laws or disciplinary codes and make that offence or infraction punishable by appropriate penalties which take into account its grave nature. The Government shall, as the case may be, prosecute or take disciplinary action against a contingent commander who is found by a United Nations investigation to be responsible for any such failure in the same manner as it would in respect of an offence or disciplinary infraction of a similarly grave nature under its laws or disciplinary codes.

5. The Parties agree that, if a contingent commander is repatriated pursuant to paragraph 3, the United Nations shall recover payments in respect of that contingent commander that it made to the Government from the date of the commander's appointment up to the date of repatriation, by withholding those amounts from future reimbursements to the Government. The money so recovered will be used by the United Nations for the purposes of assistance to victims of sexual exploitation and abuse by any member of United Nations peacekeeping missions.

6. It is understood that the assessment by the Force Commander of the performance of the commander of the Government's national contingent will include, if relevant, a notation regarding his or her cooperation with any United Nations investigation into possible misconduct by any members of the Government's national contingent.

7. The United Nations shall provide the Government with the findings of its investigations into possible misconduct by any members of the Government's national contingent and, to the extent that it may not already have done so, with information gathered in the course of those investigations.

Commentary

1. The Adviser "recommended that the General Assembly authorize the establishment of a professional investigative capacity to investigate allegations of sexual exploitation and abuse and misconduct of a similar grave nature against all categories of peacekeeping personnel" (A/59/710, para. 36). The Special Committee

endorsed this recommendation, "bearing in mind General Assembly resolution 59/287" (A/59/19/Rev.1, part two, chap. II, para. 30), that conferred upon the Office of Internal Oversight Services the responsibility to conduct the Organization's internal administrative investigations into allegations of complex and serious misconduct, in particular sexual exploitation and abuse. When considering the issue of United Nations investigations, the Special Committee also recommended full consideration to the recommendations in the Adviser's report (ibid., para. 31). Article 7 quater implements these two recommendations.

2. In his report, the Adviser recommended that where allegations were made of serious misconduct, including sexual exploitation and abuse, involving any members of national contingents, the United Nations and troop contributor should conduct a joint investigation. This would typically have entailed the United Nations flying out a national legal expert from the troop contributor to the peacekeeping mission area to participate in the United Nations administrative investigation on the ground. The Adviser stated that "the participation of the troop-contributing country at an expert level [in the United Nations investigation] would help to ensure that evidence was gathered in conformity with the laws of the troop-contributing country so that it could be subsequently used by the country to take action against the contingent member" (A/59/710, para. 33). The concept of a requirement for a national legal expert from the troop contributor to participate in the United Nations investigation was to have the added benefit of "instil[ling] confidence that allegations were properly evaluated" (ibid.).

3. To reflect the Adviser's recommendations, the Secretariat circulated informally to members of the Special Committee on Peacekeeping Operations in December 2005 the following draft language:

> *"The Government shall designate prosecutor(s) and/or expert(s) from those named in Annex [I] of this Memorandum (which list may be updated by letter from the Government to the United Nations Under-Secretary-General for Peacekeeping Operations) to participate in any United Nations Investigation into allegations of serious misconduct, particularly sexual exploitation and abuse, against military and other members of the Government's national contingent. The Parties acknowledge that these individuals may be requested to participate on short notice. The Parties undertake to cooperate with a view to ensuring that the Government is represented in a timely manner in the United Nations Investigation. To this end, the United Nations will arrange transport for the designated person to the peacekeeping area and will pay subsistence at standard United Nations rates. It is understood that the failure of the Government to designate a prosecutor or expert, or the failure of the prosecutor or expert designated by the Government actually to participate in a United Nations Investigation, shall not prevent that Investigation from proceeding."*

4. The Office of Internal Oversight Services referred to the national prosecutor(s) and/or expert(s) who were to be designated by the troop contributor to join its administrative investigations as "National Investigations Officers" and developed a detailed concept of operations for such experts, which underwent a number of iterations. In light of views expressed in 2005 and 2006 by Member States, the proposed new articles now distinguish between the separate investigations conducted by the United Nations for administrative purposes (present article) and by

the Government (see article 7 sexies below). Correspondingly, the concept of the National Investigations Officer is now formulated as a voluntary one, in accordance with which troop contributors are invited, but not required, to send such experts (ibid.).

5. Paragraph 1 of the present article provides that the United Nations may decide to conduct an administrative investigation into any allegation of misconduct involving any member of a national contingent participating in United Nations peacekeeping operations. It obligates the United Nations to immediately inform the Government of such allegations, so that the Government may proceed to take action pursuant to its responsibility to maintain discipline and good order among the members of its national contingent (article 7 ter) and to exercise its jurisdiction with respect to any crimes, offences or other acts of misconduct that may have been committed (article 7 quinquiens). Paragraph 1 also acknowledges the mandate for the Office of Internal Oversight Services to conduct investigations into allegations of sexual exploitation and abuse and other forms of serious misconduct relating to all categories of peacekeeping personnel, including all members of national contingents.

6. Paragraph 2 implements the recommendation of the Adviser that the model MOU require a troop contributor "to share ... any information that the contingent has gathered as a result of its own investigation into an incident" (A/59/710, para. 34) by placing an obligation on the Government to issue an instruction to this effect to the commander of its national contingent. Insofar as paragraph 2 obligates contingent commanders and the members of national contingents to cooperate fully with United Nations investigations, it also gives effect to the Adviser's statement that "Cooperation between a contingent and the mission is essential if the problem of sexual exploitation and abuse is to be eliminated" (ibid., para. 34).

7. In paragraph 61 of his report, the Adviser observes that "what is inexcusable is a contingent commander who does not cooperate with a [United Nations] investigation or, worse, seeks to hinder that investigation by failing to properly cooperate with it". In the same paragraph of the Adviser's report, it is recommended "that the Secretary-General direct heads of mission to recommend the immediate repatriation of any contingent commander who fails to cooperate with a [United Nations] investigation or otherwise fails to discharge his or her responsibility to help the mission eliminate sexual exploitation and abuse". Paragraph 3 of the present article implements the Adviser's recommendation by articulating the understanding that the United Nations will take such action where contingent commanders either fail to cooperate with it during an investigation into allegations of serious misconduct, fail to exercise effective command and control, or fail to immediately report or take action in respect of serious misconduct allegations. The Adviser suggested "that the Secretary-General write to the Head of State of the troop-contributing country to explain why he was forced to take such action", namely repatriate a contingent commander (ibid., para. 61). The proposed language has been broadened to obligate the United Nations to explain the findings that led to the repatriation, without specifying who in the Government should be notified.

8. Paragraph 4 implements the Adviser's recommendation that the model MOU require a troop contributor to take disciplinary action against a contingent commander who is repatriated because a United Nations investigation found that the contingent commander had failed to cooperate with it (ibid., para. 61).

9. Paragraph 5 implements the Adviser's recommendation that the United Nations should recover payments it has made to the troop contributor in respect of any individual contingent commander who is repatriated for having failed to cooperate with a United Nations investigation into allegations of sexual exploitation and abuse (ibid., paras. 61 and 65). The Adviser also recommended that the funds so recovered be paid into a voluntary trust fund for victims (ibid., paras. 61 and 65), which would be established to provide assistance to victims of sexual exploitation and abuse by United Nations peacekeeping personnel (ibid., para. 56). The proposed language on payment of funds focuses on the use to which the recovered funds will be put, rather than specifying a mechanism for receipt, management and disbursement of such funds.

10. The Adviser recommended that contingent commanders who cooperate receive a special commendation by letter from the Secretary-General to the Head of State or Government (ibid., paras. 60, 61 and 65). Paragraph 6 proposes language to reflect the intent behind the Adviser's recommendation, while taking into account the existing performance evaluation mechanism in place in United Nations peacekeeping operations.

11. Paragraph 7 of the present article and paragraph 5 of article 7 sexiens place reciprocal obligations on the United Nations and the Government to share with each other the findings of their respective investigations. To the extent that they have not already done so pursuant to paragraph 3 of article 7 sexiens and paragraph 2 of the present article respectively, they also place reciprocal obligations on the United Nations and the Government to share with each other information gathered in the course of those investigations.

Article 7 quinquiens
Exercise of jurisdiction by the Government

1. It is understood that, in accordance with the established principles and practices of United Nations peacekeeping, the military members of the national contingent provided by the Government are subject to the Government's exclusive jurisdiction in respect of any crimes or offences that might be committed by them while they are assigned to the military component of [United Nations peacekeeping mission]. It is further understood that this exclusive jurisdiction is based on the understanding that the Government will exercise such jurisdiction as might be necessary with respect to crimes or offences committed by members of the Government's national contingent while they are so assigned. The Government assures the United Nations that it shall exercise such jurisdiction with respect to such crimes or offences.

2. The Government further assures the United Nations that it shall exercise such disciplinary jurisdiction as might be necessary with respect to acts of misconduct committed by any members of the Government's national contingent while they are assigned to the military component of [United Nations peacekeeping mission] that do not amount to crimes or offences.

Commentary

1. The Adviser noted that, pursuant to paragraph 47 (b) of the model SOFA, military members of the military component of a United Nations peacekeeping operation are subject to the exclusive jurisdiction of their troop-contributing country

in respect of any crimes that they might commit in the country hosting that peacekeeping operation.[1] In order to ensure that there is no impunity for such crimes, paragraph 48 of the model SOFA goes on to provide that the Secretary-General will obtain assurances from the Governments of troop-contributing countries that they will be prepared to exercise this jurisdiction with respect to crimes that might be committed by members of their national contingents in the host country. The accompanying footnote to that paragraph envisages that these assurances would be inserted in the memorandums of understanding that the Organization concluded with troop-contributing countries. The Adviser noted that the Organization had ceased to seek such assurances, however. He accordingly recommended that "the Special Committee should recommend to the General Assembly that it request the Secretary-General to always obtain formal assurances from troop-contributing countries that they will ensure respect for local law by members of their contingents and that they will exercise jurisdiction when a [United Nations] investigation ... concludes that allegations made against a military member of its contingent are well founded" (A/59/710, para. 78). Paragraph 1 of the present article implements this recommendation.

2. Paragraph 2 makes similar provision to paragraph 1 for cases in which members of a Government's national contingent engage in misconduct that does not amount to a crime or offence under the laws of the country where they are operating. As is the case of local laws and regulations, the Organization gives an undertaking to the host country in the status-of-forces agreement that discipline and good order will be maintained among the members of its peacekeeping operation. This undertaking is reflected in paragraph 40 of the model SOFA. At the same time, and again as in respect of offences against local laws, exclusive competence to take disciplinary action with respect to such misconduct lies with the troop-contributing country. In order to ensure that violations of good order and discipline do not go unpunished and that the Organization complies with its undertakings in its SOFAs, it is necessary that the United Nations obtain assurances from its troop-contributing countries that they will take disciplinary action in respect of acts of misconduct that do not amount to criminal offences. The Organization used to seek such assurances, but, as the Adviser noted with respect to crimes, has ceased to do so. Paragraph 2 is aimed at resuming this essential practice.

Article 7 sexiens
Investigations by the Government

1. In the event that the Government has reason to suspect that any member of its national contingent has committed an act of misconduct, it shall inform the United Nations and immediately forward the case to its appropriate authorities for the purposes of investigation. It shall also do the latter in the event that the United Nations provides it with the information envisaged in paragraph 1 of article 7 quater.

2. In the event that the Government decides to send one or more officials who are not members of its national contingent to the mission area to investigate the matter, it shall immediately inform the United Nations of that

[1] It is recalled in this connection that, pursuant to paragraph 47 (a) of the model SOFA, civilian members of the military component may be subject to criminal proceedings for crimes or offences they commit in the host country.

decision, including the identities of the official or officials concerned (hereafter "National Investigations Officers"). [The United Nations shall arrange and pay for the transportation of National Investigations Officers to the mission area and shall pay for their subsistence at standard United Nations rates for a duration agreed to by the Parties.] [The Government will arrange and pay for the travel and subsistence costs of National Investigations Officers.] Upon the request of the Government, the United Nations shall provide administrative and logistical support to the National Investigations Officers while they are in the mission area.

3. The United Nations agrees to cooperate fully and to share documentation and information with appropriate authorities of the Government, including any National Investigations Officers, that are investigating possible misconduct by any member of the Government's national contingent.

4. Upon the request of the Government, the United Nations shall assist the competent authorities of the Government, including any National Investigations Officers, that are investigating suspected misconduct by any members of its national contingent in liaising with other Governments contributing personnel in support of [United Nations peacekeeping mission], as well as with the competent authorities in the mission area, with a view to facilitating the conduct of those investigations. The competent authorities of the Government shall ensure that prior authorization for access to any victim or witness who is not a member of the national contingent, as well as for the collection or securing of evidence not under the ownership and control of the national contingent, is obtained from the relevant competent authorities through the Head of Mission.

5. The Government shall provide the United Nations with the findings of investigations conducted by its competent authorities, including any National Investigations Officers, into possible misconduct by any member of its national contingent and, to the extent it may not already have done so, with information gathered in the course of those investigations.

Commentary

1. Should the Government have reason to suspect that a member of its national contingent may have committed an act of misconduct, article 7 quinquiens requires that it proceed to exercise its criminal or disciplinary jurisdiction. The first step in doing so is to forward the case to its appropriate authorities so they may investigate it. Paragraph 1 of the present article so provides. It also places an obligation on the Government to inform the United Nations. This is necessary to ensure that the United Nations is in a position to initiate its own administrative investigation into the matter in accordance with article 7 quater. It is also necessary if the Organization is to be in a position to discharge its responsibility to account to the host country for the performance of its undertakings to ensure that discipline and good order are maintained among the members of the peacekeeping operation and that they respect local laws and regulations (see the commentary to article 7 ter).

2. Paragraph 2 takes into consideration the views expressed by Member States in 2005 and 2006 regarding the National Investigations Officer concept. In accordance with those views, troop contributors should be invited, rather than required, to send such experts to investigate allegations of misconduct involving any member of

national contingents. On arrival in the mission area, such experts would not participate in the United Nations investigation, but instead conduct, or assist in conducting, a parallel national investigation. The text sets out two options for funding the National Investigations Officer's transportation and subsistence costs. A decision is required by the General Assembly as to the source of the funding for such experts.

3. The Government having undertaken in paragraph 1 to investigate suspected acts of misconduct by any member of its national contingent, the United Nations for its part should actively facilitate any such investigation, in particular, by sharing information in its possession with the appropriate authorities of the Government and by facilitating access by those authorities to members of the peacekeeping operation who are under the direct authority of the Secretary-General — namely, United Nations officials, experts on mission for the United Nations and United Nations Volunteers — or who are under his control — namely, individual and corporate contractors and their employees. Paragraph 3 sets out such an undertaking on the part of the Organization. The facilitation of contacts with victims and witnesses who were interviewed by the United Nations during the course of its investigation would also potentially fall within the scope of this undertaking, subject to the concurrence of host-country authorities.

4. Paragraph 4 sets out a related undertaking on the part of the United Nations to assist the authorities of the Government that are conducting an investigation in securing assistance from other Governments. Such assistance may be necessary in order for those authorities to secure access to the members of other national contingents serving in the peacekeeping operation concerned. It may also be necessary in order for those authorities to obtain access to witnesses, victims and other sources of information falling under the jurisdiction of the host country. Paragraph 44 of the model SOFA provides that the United Nations and the host Government shall assist each other in obtaining such access. Accordingly, all requests for such access should be made through the Head of Mission.

5. Paragraph 5 of the present article and paragraph 6 of article 7 quater place reciprocal obligations on the Government and the United Nations respectively to share with each other the findings of their respective investigations. To the extent that they have not already done so pursuant to paragraph 2 of article 7 quater and paragraph 3 of the present article, they also place reciprocal obligations upon them to share with each other information gathered in the course of those investigations.

Article 7 septiens
Accountability

1. If either a United Nations investigation or an investigation conducted by the competent authorities of the Government concludes that suspicions of misconduct by any member of the Government's national contingent are well founded, the Government shall forward the case to its appropriate authorities for the purposes of prosecution or disciplinary action, as the case may be. The Government agrees that those authorities shall take their decision in the same manner as they would in respect of any other offence or disciplinary infraction of a similar nature under its laws or relevant disciplinary code. The Government agrees to notify the Secretary-General of the outcome of the case

and will submit progress reports to him or her every 120 days after a case has been referred to it, until the case is finalized.

2. The Government agrees that it shall forward to its relevant authorities, for consideration in the same manner as a domestic claim of a similar nature, child-support claims forwarded by the United Nations, if accompanied with credible evidence to indicate that any member of the Government's national contingent is the father of the child.

3. In the event that the United Nations forwards to it a claim for the payment of child support by any member of its national contingent, supported by credible evidence that the member concerned is the father of the child, the Government shall assist the claimant in filing and pursuing that claim before its competent national authorities, including by ensuring that the claimant is assigned legal assistance, in any case where the interests of justice so require, and without payment if the claimant does not have sufficient means to pay for it.

Commentary

1. Paragraph 1 implements a number of recommendations made by the Adviser (A/59/710, paras. 79 and 92), specifically, that the model MOU provide: first, that if a United Nations investigation concludes that an allegation of a criminal offence is well founded, the troop contributor should be obligated to forward the case to its national authorities to be considered for prosecution; secondly, that the troop-contributing country give an assurance that those authorities will take their decision whether to prosecute and, if so, how in the same manner as they would for an offence of a similar grave nature falling under the laws of that country; thirdly, that, if those authorities conclude that prosecution is not appropriate, the troop-contributing country submit a report to the Secretary-General explaining why this is so; and, fourthly, that the troop-contributing country agree to inform the Secretary-General within 120 days after a case has been referred to it of measures it has taken under its national law and to inform him of progress achieved every 120 days thereafter until the case is finalized.

2. At the same time, paragraph 1 has been broadened to include all cases of misconduct. It is necessary that there be accountability not only for acts of misconduct that involve the commission of crimes, but also for other forms of misconduct. The undertaking on the part of the Government to refer cases to its national authorities to be considered for possible prosecution or disciplinary proceedings has also been broadened to extend to cases in which the Government's own investigation concludes that allegations or suspicions of misconduct by any member of its national contingent are well founded. This is a corollary of the Government's undertaking in article 7 quinquiens to exercise its criminal or other disciplinary jurisdiction with respect to crimes, offences or acts of misconduct that may be committed by any member of its national contingent.

3. The Adviser noted the obligations upon United Nations staff to honour family and child support obligations as promulgated in the Staff Regulations and Rules (see ST/SGB/1999/4). He encouraged the Organization to help victims of sexual exploitation and abuse who have credible evidence that a staff member is the father of their child to seek court orders for child support where there is a functioning legal system in the area of operations (see A/59/710, para. 76). Similarly, the Adviser noted that, when such claims are made against any personnel of national

contingents, the United Nations should assist the mothers concerned, or those acting on their behalf, to make claims that could be forwarded to the troop-contributing country for consideration (ibid., para. 77). Paragraph 2 implements the Adviser's recommendation that the MOU provide that the troop-contributing country "agree to process such claims in accordance with its laws". At the same time, it broadens the scope of this agreement to encompass all child-support claims, whether arising out of sexual exploitation and abuse or not.

4. A troop contributor generally cannot take action on a child-support claim forwarded by the United Nations in the absence of a court order from its competent national authorities. The Adviser's recommendation implemented in paragraph 2 would not therefore, in and of itself, lead to a greater likelihood of genuine child support claims involving personnel of national contingents being met. An obligation is therefore placed on the Government to assist claimants to file and pursue such claims. Paragraph 3 sets out this obligation and outlines the nature of that assistance and the conditions under which it is to be granted.

Annex F
Definitions

Insert the following six additional definitions that *read* as follows:

1. Misconduct means any act or omission that is a violation of United Nations standards of conduct, Mission standards of conduct or local laws and regulations.

2. Mission standards of conduct means standard operating procedures, directives and other regulations, orders and instructions issued by the Head of Mission, Force Commander or Chief Administrative Officer of [United Nations peacekeeping mission].

3. Serious misconduct means any act or omission that is a violation of United Nations standards of conduct, Mission standards of conduct or local laws and regulations and that results in or is likely to result in serious loss, damage or injury to an individual or to the mission.

4. Sexual abuse means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

5. Sexual exploitation means any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

6. United Nations investigation means a United Nations administrative investigation into allegations or suspicions of misconduct by any member of a national contingent, conducted by the appropriate United Nations investigative office, including the United Nations Office of Internal Oversight Services, in accordance with the rules of the Organization.

Commentary

1. Definitions 1 and 3 define misconduct and serious misconduct by reference to: breaches of the United Nations standards of conduct contained in annex H, which are applicable to all missions; the Mission standards of conduct, which are specific

to each mission; and, pursuant to paragraph 6 of the model SOFA, local laws and regulations.

2. Definitions 4 and 5 contain the definitions of "sexual abuse" and "sexual exploitation" respectively, taken from the definitions in the 2003 bulletin (ST/SGB/2003/13).

After **annex G**, *insert* annex H that *reads* as follows:

Annex H
United Nations standards of conduct

(a) Ten Rules — Code of Personal Conduct for Blue Helmets[2]

(b) We are United Nations Peacekeepers[3]

(c) Prohibitions on sexual exploitation and abuse

1. Sexual exploitation and sexual abuse have always constituted unacceptable behaviour and prohibited conduct for personnel of national contingents. Such acts violate universally recognized international legal norms and standards. They also victimize women and children who are frequently the most vulnerable members of the population in the peacekeeping areas.[4]

2. The term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.[5]

3. In order to further protect the most vulnerable populations, especially women and children, the following specific standards must be respected by personnel of national contingents:[6]

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary action by the appropriate authorities of the troop-contributing country;

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally unless the member of the national contingent is legally married to someone under the age of 18 years but over the age of majority or consent in their country of citizenship. Mistaken belief in the age of a child is not a defence;

(c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is

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[2] The text can be found at: http://www.un.org/depts/dpko/training/tes_publications/publi.htm.

[3] Ibid.

[4] This condition reproduces the substance of the relevant parts of section 3.1 of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).

[5] This condition reproduces section 1 of the 2003 bulletin (ST/SGB/2003/13).

[6] This condition reproduces the substance of sections 3.2 and 4.4 of the 2003 bulletin (ST/SGB/2003/13).

prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;

(d) Sexual relationships between personnel of national contingents and beneficiaries of assistance (including the local population and refugees), since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;

(e) Where any personnel of a national contingent develops concerns or suspicions regarding sexual exploitation or sexual abuse by another, whether or not within the United Nations system, he or she must report such concerns to the Contingent Commander;

(f) Personnel of national contingents are obliged to help create and maintain an environment that prevents sexual exploitation and sexual abuse. Commanders at all levels of a national contingent have a particular responsibility to support and develop systems that maintain this environment.

4. The standards set out above are not intended to be an exhaustive list. Other types of sexually exploitive or sexually abusive behaviour may be grounds for disciplinary action by the appropriate authorities of the troop-contributing country.[7]

5. If, after proper investigation by the United Nations in consultation with the troop-contributing country concerned, there is evidence to support allegations against any personnel of a national contingent of sexual exploitation or sexual abuse, the cases may, after consultation with the United Nations Office of Legal Affairs, be referred to the competent national authorities of the troop-contributing country for criminal prosecution.[8]

[7] This condition reproduces the substance of section 3.3 of the 2003 bulletin (ST/SGB/2003/13).

[8] This condition reproduces the substance of section 5 of the 2003 bulletin (ST/SGB/2003/13).